

Wisconsin Act 87

2006 Real Estate Regulatory Update

How the new Real Estate Law affects your practice

What is the Wisconsin Department of Regulation and Licensing?

The Department of Regulation and Licensing protects the citizens of Wisconsin by ensuring the safe and competent practice of licensed professionals.

What does the Department do?

The Department serves the public and professionals by fairly administering education, experience, and examination requirements, setting professional practice standards and ensuring compliance by enforcing occupational licensing laws.

The Department licenses and regulates 128 different types of credentials in 57 professional fields. The agency's 110 employees issue approximately 49,500 new credentials each biennium, renew more than 304,000 credentials, and provide ongoing support and services to 340,000 credential holders.

The agency also provides centralized administrative services to 46 boards, councils and committees who have various levels of responsibility and oversight based on statutory provisions.

Recent statutory changes to Wisconsin real estate law, which were effective July 1, 2006, have significantly changed the practice of providing brokerage services to consumers in Wisconsin. This brochure highlights the significant changes to the law and describes how those changes affect brokerage services.

All licensees are encouraged to review and familiarize themselves with these changes to the law contained in Chapter 452 of the Wisconsin Statutes.

Please visit the Department of Regulation and Licensing's website at <http://drl.wi.gov/index.htm> to access the full text of the revised Chapter 452 and to order current codebooks.

Please contact the Department of Regulation at (608)-266-2112 or visit us at <http://drl.wi.gov> if you have any further questions.

Definition of "Broker"

Wis. Stat. § 452.01 (2) (a), (b) and (bm)

- Clarified to include a person who sells businesses, whether or not the business includes real property. Showing property that is offered exclusively for rent does not, in and of itself require a broker's license.

Creation of Designated Agency

Wis. Stat. § 452.01 (3w)

- Newly recognized as an authorized agency relationship in Wisconsin. Designated agency is a multiple representation relationship in which each client of the broker receives negotiation services from the

broker through employee agents of the broker who are not providing negotiation services to any other client in the transaction.

Permissible Options for Designated Agency

- Broker A (business entity)
 - Agent 1- Client S [Seller-listing agreement]
 - Agent 2- Client B [Buyer-buyer agency agreement]
- Broker B (business entity)
 - Agent 1- (the business representative or other control person of the business entity holding a broker's license) - Client S or B [either listing agent or buyers agent]
 - Agent 2- Client S or B [the client not represented by Agent 1]
- Broker C (sole proprietor)

The sole proprietor MUST have two employees/agents, one to be assigned as the seller's agent and one to be assigned as the buyer's agent.

The employing sole proprietor broker MAY NOT serve as an agent for either client.

Key Provisions of Designated Agency

- Confidentiality

Each client is owed full confidentiality.

- Duties

Each designated agent owes full client level duties to the client that they are representing.

- Broker Disclosure

If a client enters into an agency agreement with a broker to receive brokerage services related to real estate primarily intended for use as a residential property containing one to four dwelling units, a written BROKER DISCLOSURE TO CLIENTS must either be contained in the agency agreement or the broker must provide it separately and request the client's signed acknowledgment that the client has received a copy of the disclosure.

The mandatory disclosure language is set forth at Wis. Stat. § 452.135.

Client Consent, [Wis. Stat. § 452.135 (2) (a)]

- Consent for designated agency MUST be obtained from both clients.
- Either client MAY withdraw at ANY TIME from designated agency, by providing WRITTEN notice to the broker.

- If either client WITHDRAWS consent to designated agency then BOTH clients are transferred to a multiple representation relationship without designated agency. Neither the broker nor the broker's agents may thereafter favor one client's interests over another or provide information, opinions or advice which may favor the interests of one client over another.
- A client MAY also initially agree ONLY to multiple representation without designated agency. "Multiple representation" means a relationship between a broker and two or more of the broker's clients in which the clients are parties in the same transaction. The interests of any one client cannot be favored over those of any other client in the same transaction.
- If a client DOES NOT AGREE to ANY FORM of a multiple representation relationship then the broker IS NOT ALLOWED to provide brokerage services to more than one client in the transaction.

"Employ", "Employee"
Wis. Stat. § 452.01 (5m)

- Specifically includes independent contractors.

"Negotiate"
Wis. Stat. § 452.01 (5m)

- Modified to provide that "negotiate," means to provide assistance to a party in developing a proposal or agreement relating to a transaction by acting as an INTERMEDIARY, COMPLETING FORMS OR OTHER DOCUMENTS, or PRESENTING PROPOSALS to a party.
- TWO NEW EXCEPTIONS- "Negotiate" DOES NOT include providing advice or opinions on matters material to a transaction and showing a party real estate DOES NOT, in and of itself, constitute negotiating.
- A broker may not negotiate on behalf of a party who is not the broker's client unless and until the broker provides the BROKER DISCLOSURE TO CUSTOMERS to that party. [Wis. Stats. § 452.135]

Limited Service Brokers
Wis. Stat. § 452.133 (6)

- A broker's duties to that broker's client are set forth in Wis. Stat. § 452.133 (2), which includes "negotiate" as a duty.
- Generally the duties to a client can not be waived with one exception: The duty to negotiate MAY BE WAIVED by the client.
- If a client is going to waive the duty to negotiate, the broker must first provide a written disclosure containing the following, [Wis. Stat. § 452.133 (6)]:
 - a copy of the text of Wis. Stat. §§ 452.01 (5m), [definition of "negotiate"], and §452.133 (2) (d), [the broker's duty to negotiate].
 - a statement that, as a consequence of the client's waiver, the broker will have no legal duty to negotiate on behalf of the client.
 - a statement that as a consequence of the client's waiver, the client may require the assistance of

an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.

Agency Relationships Wis. Stat. § 452.1341

- A broker may provide brokerage services to any person in a transaction whether or not the broker has entered into an agency agreement with a party to the transaction OR if the broker has been engaged to provide brokerage services in the transaction as a subagent.
- EXCEPTION- A broker may not negotiate on behalf of a party to a transaction unless a party to the transaction is either the broker's client or a client of a principal broker who has engaged the broker as a subagent.
- A broker may not provide brokerage services in a multiple representation relationship unless all of the broker's clients have consented IN WRITING to the relationship.
- A broker in a multiple representation relationship may not engage in designated agency unless all of the broker's clients in the relationship have consented IN WRITING to designated agency.

Subagency Wis. Stat. § 452.01 (7r)

- A "Principal broker" is a broker who engages a subagent to provide brokerage services in a transaction. [Wis. Stat. § 452.01 (5w)]
- A "Subagent" is a broker who is engaged by another broker to provide brokerage service in a transaction, but not an employee of the engaging broker.

Subagent duties:

- Owes all parties the duties contained in Wis. Stat. § 452.133 (1): honesty, fairness, reasonable skill and care, timely disclosure in writing of all material adverse facts, confidentiality, providing accurate information about market conditions, safeguarding trust funds, and; if negotiating on behalf of a party, the presentation of contract proposals in an objective and unbiased manner including the disclosure of the advantages and disadvantage of each proposal.
- A subagent DOES NOT owe the clients of the principal broker any of the duties owed by the principal broker to the principal broker's client under Wis. Stat. §452.133 (2), EXCEPT;
- A subagent may NOT place the subagent's interest ahead of the interest of the clients of the principal broker.
- A subagent may not provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal broker.

Duties of a Broker Where No Agency or Subagency Relationship Exists Wis. Stat. § 452.133 (5)

- A broker owes all parties the duties contained in Wis. Stat. § 452.133 (1): honesty, fairness, reasonable skill and care, timely disclosure in writing of all material adverse facts, confidentiality, providing

accurate information about market conditions, safeguarding trust funds, and; if negotiating on behalf of a party, the presentation of contract proposals in an objective and unbiased manner including the disclosure of the advantages and disadvantage of the proposals.

- The broker may NOT, unless required by law, provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services.

All Wisconsin licensed brokers and salespersons should review these new provisions governing the practice of real estate brokerage in Wisconsin.

For more information

Please visit the Department's website at <http://drl.wi.gov/index.htm> to obtain a printable PDF version of this pamphlet. The Department of Regulation and Licensing also has provided a printable PDF information pamphlet for consumers outlining their rights under the revised law.

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